

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

RH06050472

January 31, 2006

TEXT OF PROPOSED REGULATION

Adopt Title 10, California Code of Regulations, Chapter 5, Subchapter 4.75, Article 1, Section 2636 to read as follows:

SUBCHAPTER 4.75. Homeowners Insurance Rates and Underwriting.
Article 1. Experience Rating in Residential Property Lines of Insurance

§ 2636.1 Purpose

The purpose of this regulation is to prohibit rate increases without corresponding increases in loss experience because such rate increases are not actuarially sound and/or are unfairly discriminatory.

The purpose of this regulation is to provide guidance with respect to the conditions under which insurers can impose surcharges on a premium for residential homeowners insurance policies.

The purpose of this regulation is to provide guidance with respect to loss data that may or may not be permitted to form the basis of surcharged rates.

Authority: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Cal. Ins. Code section 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. Reference: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Cal. Ins. Code sections 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552.

§ 2636.2 Definitions

"Minor claim" means any claim where the payment by the insurer does not exceed the applicable deductible for the particular claim upon which benefits are paid including any adjustments for successful subrogation.

"Paid claim" means any actual payment by an insurer as a result of a claim for benefits that exceed the applicable deductible for the particular claim.

“Unpaid claim” means a claim upon which the insurer has not yet made a payment or has not yet provided a benefit or a closed no-pay claim. A claim is unpaid if an insurer obtains reimbursement by reason of subrogation.

"Natural phenomena related event" means damage caused by weather or natural phenomena, whether or not classified as an emergency by any federal or state authority.

”Base rate” means the numerical rate against which discounts and surcharges are applied.

”Underwriting” means the process which (1) *limits* the conditions under which a policy will be issued or (2) *impacts* the rates that will be charged for that policy.

Authority: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Cal. Ins. Code sections 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. Reference: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Cal. Ins. Code sections 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552; *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 726, 113 Cal. Rptr. 2d 399.

§ 2636.3 Limitations on Surcharges

No insurer authorized to do business in this State shall impose a surcharge at the inception of a homeowners or dwelling fire insurance policy or upon renewal thereof because of claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling.

A surcharge may be imposed if a claim or loss identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material change in the risk assumed or a breach of contractual duties that results in there being a substantial relationship to risk of loss, and/or there are conditions or warranties that substantially increase the potential for risk of loss and the surcharge does not result in unfairly discriminatory application of rates.

No insurer authorized to do business in this State shall consider minor claims, unpaid claims, or coverage inquiries as the basis for a rate surcharge.

Authority: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161. Reference: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161.

§ 2636.4

Limitations on Loss Data

No insurer authorized to do business in this State shall use data related to claims to calculate rates relating to premium surcharges on policies of homeowners insurance where that data relates to claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling.

Data related to claims may be used to calculate rates related to a premium surcharge if the data related to claims or losses identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material change in the risk assumed or a breach of contractual duties that results in there being a substantial relationship to risk of loss, and/or there are conditions or warranties that substantially increase the potential for risk of loss.

No insurer authorized to do business in this State shall calculate rates related to premium surcharges on policies of homeowners insurance where that data includes unpaid claims, minor claims or a loss caused by a natural phenomena related event as the basis for the premium surcharge or upon coverage inquiries

Loss data used in the development of homeowner or dwelling fire claim rate surcharges must be specific to each identified surcharge and the loss data must be separate and not redundant to loss data already used in the development of base rates or any other rate that applies to this insurance. The loss data used for rate surcharges shall be restricted to data derived from losses eligible for surcharge consideration.

Authority: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161. Reference: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161.

§ 2636.5

Disclosure

Every insurer shall provide at the point of sale, to the potential insured, a description as to how the insurer considers claims history in determining whether to nonrenew or surcharge a policy as well as the maximum amount that the insurer could apply as a surcharge. Such notice must be in writing.

Every insurer shall provide an advance annual notice to its insureds describing how the insurer considers claims history in determining whether to nonrenew or surcharge a policy as well as the maximum amount that the insurer could apply as a surcharge. Such notice may be on the declarations page or as a notice that is sent to the insured separately or with the policy.

Authority: Cal. Ins. Code sections 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. Reference: Cal. Ins. Code sections 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould*

& Bowers v. Associated Internat. Ins. Co., (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552; *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 726 113 Cal. Rptr. 2d 399.